HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.20899 of 2005

%14-11-2007

 # N. Santha Kumari, W/o. Sambasiva Rao,
R/o. Kubadpuram village, Rajupalem Mandal,'
Guntur District.

..... Petitioner

VERSUS

$ 1 Government of Andhra Pradesh,
rep.by its Secretary, Civil Supplies Department,
Secretariat, Hyderabad and three others

.....Respondents

< GIST:

> HEAD NOTE:

! **Counsel for petitioner : Mr.V.V.L.N.Sarma**
^ **Counsel for Respondents: G.P. FOR Civil Supplies**

? Cases referred : NIL

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 20899 OF 2005

DATED: 14 -11-2007

BETWEEN:

N. Santha Kumari

… Petitioner

And

Government of Andhra Pradesh,

Rep.by its Secretary, Civil Supplies Department,
Secretariat, Hyderabad and others

…Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 20899 OF 2005

ORDER:

This court issued Rule Nisi on 23-09-2005, but was not inclined to grant any interim order. W.P.M.P.No.27963/2007 is filed praying for the relief to receive the copy of the notification in Rc.No.1105/2007 7G: dated 27-09-2007 issued by the fourth respondent and for other reliefs. Likewise, W.P.M.P.No.27964/2007 is filed praying for the relief directing the respondents not to fill up the vacancy of Fair Price Shop dealer at Kubadpuram village, Rajupalem Mandal, Guntur District pending disposal of the main writ petition.

2. Since a counter affidavit had been filed by R2 at the request of the learned counsel representing the writ petitioner and also the learned Asst. Government Pleader for civil supplies, the writ petition itself is being disposed of finally.

3. Since Sri V.V.L.N.Sarma, learned counsel representing the writ petitioner had taken this Court through the series of events and also the nature of the orders, which were made and would maintain that from the very readying of these orders, it is clear that there was total non application of mind and in mechanical and routine way these orders were made and hence serious prejudice is caused to the writ petitioner. The counsel also pointed out to the clear orders made and the stand taken in the counter affidavit by the second respondent. Per contra, the learned Asst. Government Pleader for Civil Supplies had taken this Court through the contents of counter affidavit and would submit that in the light of the facts and circumstances, absolutely there is no justification made out by the writ petitioner warranting any

interference of this Court in relation to the impugned orders.

4. Heard the counsel.

5. Smt. N.Santha Kumari, the writ petitioner filed the present writ petition for a writ of Mandamus or any other appropriate writ, order or direction declaring the orders of the 2nd respondent in R.C.No.18/2005-S7, dated 25-08-2005 confirming the orders of the 3rd respondent in A.C.D.Dis.No.41/2004-S7, dated 09-03-2005 confirming the orders of the fourth respondent in D.Dis.No.2281/2003-G, dated 10-06-2004 cancelling the authorization to distribute essential commodities, in her favour as illegal and arbitrary.

6. The petitioner has been running the fair price shop of Kubadpuram village, Rajupalem Mandal, Guntur District for the last about one decade to the satisfaction of all concerned and there was no complaint against her running of the fair price shop at any time. It is also stated that on 28-04-2003 the fourth respondent has come to her shop and he had taken away the original sales and stock registers, authorization etc., inspite of her protests. Later, it appears that he obtained a report from the Deputy Tahsildar(CS) that there is a variation of 1.58 quintals of rice etc., she submits that 1.47 quintals of Mid Day Meals Rice was given to Adarsa Mahila Group, Anupalem. The difference represents the rice meant to be given for Food for work and the said rice was also handed over to the labour, who worked under the said scheme. The Deputy Tahsildar(CS) neither visited her shop nor weighed the stocks, and figures of his own choice were incorporated in the said report without verification of ground stocks and weighing the same. Variation was falsely shown even though there was no variation at all. Further, a variation of 1.5 kgs is admissible for every quintal of rice. From November, 2002 to April, 2004 she received about 112 tons of rice in about 11 lorries and she had distributed the same to the public and she never sold essential

commodities to the card holders at higher price and there was not even a single complaint from any of the card holders all these years. Without incorporating the true and correct facts, a false report was obtained from the above said Dy. Tahsildar and the report is purported to have been submitted to the 4th respondent recommending for initiation of disciplinary action against her and the copy of the said report was not given to her to enable her to explain the facts. It is also stated that without conducting any preliminary enquiry, the 4th respondent had issued proceedings in Rc.No.981-A/2003-G, dated 20-04-2003 suspending the petitioner's authorization. Straight away certain conclusions were recorded in the said order even before conducting regular enquiry. The 4th respondent had also issued a show cause notice in Rc.No.981-A/2003-G, dated 20-04-2003 calling upon her to show cause as to why disciplinary action should not be taken against her. At that time, she could not submit her explanation as she was suffering from jaundice and was taking medical treatment under the care of Dr.Narra Venkateswara Rao. It is further stated that stating that the petitioner had not submitted the explanation within time, the fourth respondent made an order in D.Dis.No.981-A/2003-G, dated 25-06-2003 cancelling her authorization of the fair price shop. Aggrieved by the same, the petitioner preferred appeal No.32/2003 before the third respondent and also filed an application for grant of stay. Though nearly one year elapsed, the third respondent did not pass any order. Hence, the petitioner filed W.P.No.4683/2004 before this Court for appropriate orders and the same was disposed of on 12-03-2004 directing the third respondent to dispose of the appeal within a period of six weeks from the date of receipt of the said order. It is also stated that pursuant to the orders of this Court, the third respondent made an order in A.C.D.Dis.No.32/2003-S7 dated 15-05-2004 directing the fourth respondent to permit the petitioner to present her views and accordingly, the petitioner submitted her detailed

explanation to the show cause notice of the 4th respondent on 27-05-2004. The 4th respondent again erroneously passed orders in D.Dis.No.2281/2003-G, dated 10-06-2004 again canceling the petitioner's authorization without giving any reasons for passing the said order. He simply narrated the charge, petitioner's explanation and also held that the charge is proved. The said order is challenged on the ground of total non-application of mind and without giving any reasonable opportunity to the petitioner.

7. On a reading of the said order dated 10-06-2004 after referring to the charges 1 to 7, the fourth respondent recorded findings and came to a conclusion that all charges are proved and it is not desirable to excuse her and consider her for restoration of her suspended authorization. Hence, the fair price shop authorization of Smt. N. Santha Kumari, fair price shop dealer of Kubadpuram village, Rajupalem Mandal, Guntur District is hereby cancelled. Aggrieved by the same, the petitioner filed appeal No. 41/2004 before the third respondent and the third respondent confirmed the same on 09-03-2005 in A.C.D.Dis.No.41/2004-S7. The third respondent had referred to the brief history of the case and also referred to the grounds and ultimately made an order as hereunder:

> "On perusal of records it is noticed that the appellant received show cause notice on 17-05-2003 and was given an opportunity to submit her explanation with in seven days from the date of receipt of show cause notice, but she failed to offer any explanation for the charges levelled against her and not availed the opportunity. Therefore it is construed that the appellant has no explanation to offer.
> Regarding authorization, the appellant has not renewed her authorization beyond its validity period i.e., 31-03-2003. Therefore, the appellant authorization ceased to be valid, and she did not allow to conduct business beyond the validity period. Moreover, the appellant did not produce any evidences in support of charges levelled against her.
> In view of the above circumstances, I am not inclined to interfere with the orders of the Revenue Divisional Officer,

Guntur in his proceedings D.Dis.No.2281/2003-G, dt.10-06-2004.

In the result, the appeal petition is "Dis-allowed".

8. Aggrieved by the said order of the third respondent, the petitioner filed revision petition No.18/2005 before the second respondent and the second respondent also without any independent application of mind, though the rivisional authority is expected to apply the mind had confirmed the orders dismissing the revision. The relevant portion of the said order reads as hereunder:

> "On perusal of records it is noticed that while conducting the inspection of the F.P.Shop of the revision petitioner by the Civil Supplies Deputy Tahsildar, Krosuru, certain variations were found in rice sticks and also found certain irregularities committed by the dealer and the authorization of the revision petitioner was also expired by 31-03-2003 and not renewed for further period. Hence, the Revenue Divisional Officer, Guntur has issued a show-cause notice to the revision petitioner on 20-04-2003 by directing her to submit her explanation within 7 days from the date of receipt of the notice. The said notice has been received by the revision petitioner on 17-05-2003 has received the said notice and she failed to submit her explanation before the competent authority on or before 24-05-2003 for the charges levelled against her in the show-cause notice also not availed the opportunity. Therefore, it is construed that the revision petitioner has no explanation to offer.
>
> Regarding authorization, the revision petitioner has not renewed her authorization beyond its validity period. Therefore, the authorization ceased to be valid and she did not allow to conduct business beyond the validity period.
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> In view of the above circumstances, I am not inclined to interfere with the orders of the Joint Collector, Guntur issued vide A.C.D.Dis.No.41/2004-S7, Dt.09-03-2005.
>
> In the result, the revision petition is "Dis-allowed".

9. As can be seen from the orders made both by the third respondent and the second respondent apart from certain other grounds, the principal ground recorded is that an opportunity had been given, but the said opportunity had not been availed by the writ

petitioner.

10. In the counter affidavit filed by respondent No.2, it is averred that the Civil Supplies Deputy Tahsildar, Krosuru has inspected the F.P.Shop of the petitioner on 20-04-2003 and found 1.58 quintals shortage in SGRY rice stocks while verifying the ground balance stock and sales registers maintaining in F.P.Shop. During the course of enquiry conducted by the Civil Supplies Deputy Tahsildar, Krosuru it has been noticed that the authorization of the dealer is valid upto only 31-03-2003 and it was not renewed for further period. The petitioner was also failed to furnish Demand Drafts upto 20-04-2003 for lifting of essential commodities for the month of 4/2003 and hence, the Mandal Revenue Officer, Rajupalem made alternate arrangements for lifting and for distributing the essential commodities to the card-holders through the incharge dealer of Sri A. Ganga Raju. During the course of enquiry, the card-holders of the F.P.Shop of the petitioner have stated that the dealer is lifting the essential commodities at the end of every month and used to distribute the PDS rice to the card-holders for 3 or 4 days only and the dealer is not maintaining the timings of the F.P.Shop and she is selling the essential commodities at higher rates than the Government notified price. Further, it is stated that basing on the report of Civil Supplies Deputy Tahsildar, Krosuru, the Revenue Divisional Officer, Guntur has suspended the authorization of the F.P.Shop dealer vide proceedings in Rc.No.981/2003-G,
Dt.20-04-2003 and also issued an opportunity by giving a show-cause notice to the F.P.Shop dealer for filing of her explanation for the charges levelled against her in the show-cause notice. But, the dealer failed to furnish her explanation within the stipulated time and hence, it was construed that the dealer has no explanation to offer. Hence, her authorization was cancelled by the Revenue Divisional Officer, Guntur vide proceedings in D.Dis.No.981-A/
2003-G, dated 25-06-2003. Further, it is stated that aggrieved by the

suspension of authorization orders issued by the Revenue Divisional Officer, Guntur, the petitioner filed an appeal before the Joint Collector, Guntur and also filed a writ petition in W.P.No.4683/2004 before this Court and this court disposed of the writ petition by directing the Joint Collector to finalise the appeal pending before him within a period of six weeks and the Joint Collector, Guntur disposed of the appeal by directing the Revenue Divisional Officer, Guntur to give an opportunity to the appellant for presenting her views vide A.C.D.Dis.No.32/2003-S7, dated 15-05-2004. It is also stated that the petitioner had not convinced the Revenue Divisional Officer, Guntur with the explanation submitted by her on 27-05-2004 and moreover, she failed to produce the evidence by denying the charge of shortage in SGRY rice stocks and moreover, all the charges levelled against the dealer are held proved reasonable doubt. Hence, the authorization of the F.P.Shop dealer has been cancelled by the Revenue Divisional Officer, Guntur vide proceedings D.Dis.No.2281/2004-G, dt.10-06-2004. It is also stated that aggrieved by the cancellation of authorization orders issued by the Revenue Divisional Officer, Guntur, the delinquent dealer has filed an appeal petition bearing No.41/2004-S7 before the Joint Collector, Guntur. The Joint Collector, Guntur heard the case and noticed that the F.P.Shop dealer has not renewed her authorization beyond 31-03-2003 and she was not offered her explanation before the Revenue Divisional Officer, Guntur and moreover, the dealer was also not mentioned the reasons for not submitting her explanation in her appeal petition also. Hence, the appeal petition has been “dis-allowed” by the Joint Collector, Guntur vide A.C.D.Dis.No.41/2004-S7, dated 09-03-2005. It is also further stated that the delinquent dealer filed a revision petition before the District Collector, Guntur against the orders of the Joint Collector, Guntur issued in A.C.D.Dis.No.41/2004-S7, dt.09-03-2005. On perusal of records, the District Collector, Guntur has observed that certain variations were found in the stocks while conducting inspection by the Civil Supplies Deputy Tahsildar, Krosuru

and moreover, the authorization of the F.P.Shop dealer was not renewed after

31-03-2003 and the dealer failed to submit her explanation before the competent authority for the charges levelled against her. When the authorization of the F.P.Shop dealer has not been renewed for further period, the authorization ceased to be valid and the F.P.Shop dealer did not allow to conduct business beyond the validity period, as per rules in vogue. Hence, the revision petition is “dis-allowed” by the District Collector, Guntur vide Revision case No.18/2005-S7, dt.25-08-2005. It is further stated that being a responsible permanent F.P.Shop dealer, the petitioner has to renew the authorization for further period for doing business and certain other additional facts had been pleaded in the counter affidavit.

11. These are the respective stands taken by the parties. The relevant portions of the orders made by the third respondent and the second respondent also had been specified supra. It is no doubt true that a ground of non-filing of any application for renewal also had been pointed out. As can be seen from the events in the light of the directions issued by this court in W.P.No.4683/2004, the Joint Collector, Guntur while disposing of the appeal directed the Revenue Divisional Officer, Guntur to give an opportunity to the writ petitioner for presenting her views and it appears an explanation was submitted and no doubt the fourth respondent recorded certain reasons, but, however, on appeal the third respondent and also on revision, the second respondent proceeded on the ground that the writ petitioner had not availed the opportunity though given and it is needless to say that this was at the initial stage and the subsequent events had not been noticed and the merits and demerits had not been considered either by the appellate authority-the third respondent or the revisional authority-the second respondent. The quasi-judicial authorities are expected to look into the material available on record and record appropriate findings. The mechanical way in which after recording the history of

the case while concluding such findings recorded both by second and third respondents would go to show that these orders were made in a routine way without application of mind. Hence, this Court is satisfied that the orders made in appeal by the third respondent and also in revision by the second respondent cannot be sustained and accordingly, the said orders are hereby quashed and the matter is remanded to the third respondent and the third respondent is hereby directed to give an opportunity to the petitioner, hear the petitioner and make appropriate orders in this regard as early as possible, preferably, within a period of six weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition is hereby allowed to the extent indicated above. No order as to costs.

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P.S.NARAYANA, J.

Dated: 14 -11-2007
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L.R. copy to be marked.